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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,731	02/10/2004	Bret O. Bayham	2380.005	2815
21917	7590	01/19/2007	EXAMINER	
MCRAE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			COMSTOCK, DAVID C	
			ART UNIT	PAPER NUMBER
			3733	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/19/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/776,731	BAYNHAM ET AL.
	<b>Examiner</b>	Art Unit
	David Comstock	3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on \_\_\_\_.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-17 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 09 June 2005 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/04 and 11/05.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_ .

## DETAILED ACTION

### ***Drawings***

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the corrected drawings submitted on 09 June 2005 do not pertain to the present application, and the previous drawings contain extraneous matter and have illegible reference numerals and drawings. New corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-4, 7-10 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 2, 4 and 13, the relative position and/or orientation of the diverging axes is unclear, since the drawings appear to show the axes diverging as between lateral sides of the device, not as between the ends as the claims would appear to recite.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Mangione et al. (6,585,738).

Mangione et al. disclose a rigid spinal fixation plate 4 comprising ends 8, 10 that are wider than an intermediate length 6 (see Figs. 1 and 7). The intermediate length is asymmetrically connected to the ends. There are two holes 46, 48 at each end. The holes have a countersunk depression 50, 52 with a continuous sidewall connected to a bottom wall. A plurality of bone screws 12, 14 with enlarged heads 22, 32 engage the bottom of the holes. The screws have an internal diameter, a leading end with flutes, and are configured for engagement with vertebral bone (see col. 2, lines 40-44 and 59-61). The countersunk holes comprise adjustable, diverging axes (see Figs. 1 and 2). The plate is curved (see Fig. 5).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mangione et al. (6,585,738) in view of Assaker et al. (6,652,525; cited by applicant).

Mangione et al. disclose the claimed invention except for a slot between the distal and proximal surfaces and slidable screw locks in the slots and depressions. Assaker et. al. disclose a spinal plate 1 comprising a slot 26a between distal and proximal surfaces and slidable screw locks 22 within the slots and depressions in order to prevent the screws from backing out, without increasing the size of the plate, and to improve the reliability and safety of the device (see, e.g., Figs. 1-6 and col. 1, line 11 - col. 2, line 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the spinal plate of Mangione et al. with a slot between distal and proximal surfaces of the plate and with slidable screw locks within the slots and depressions, in view of Assaker et al., in order to prevent the screws from backing out, without increasing the size of the plate, and to improve the reliability and safety of the device. The locks comprise extensions, e.g. 25, that pass through portions of the ends of the device whereat the locks are removable.

### ***Conclusion***

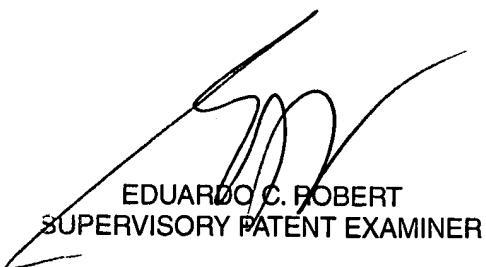
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. Please leave a detailed voice message if examiner is unavailable. If attempts to

reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
D. Comstock



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER